



PATENT

#5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Raymond S. Wach

App. No.: 09/859,716

Filed: May 17, 2001

For: Method of Performing Distributed Load Testing

Docket No.: EMPIR-022AUS

Group Art Unit: 2184

Examiner: Not yet assigned

Certificate of First Class Mailing under 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on the date set forth below.

10/22/01
Date of Signature
and Mail Deposit

By: David W. Rouille
David W. Rouille
Registration No. 40,150
Attorney for Applicant(s)

RENEWED PETITION UNDER 37 CFR 1.47(b)

BOX DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In accordance with the provisions of 37 CFR §1.47(b), Applicants respectfully request that the unsigned Declaration filed with respect to the present application be accepted to satisfy the requirements of the law.

The above-identified patent application names Raymond S. Wach as the sole inventor.

As evidenced by the facts set forth in the attached Declaration of David W. Rouille, Applicant's

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01/09/2002 GTEFFERA 00000039 09859716

01 FC:122
02 FC:205

130.00 OP
65.00 OP

04/09/2002 AKELBY 00000021 500845 09859716
01 FC:216 200.00 CH

have made diligent effort to contact the inventor Raymond S. Wach and despite such diligent effort Applicants have not received any response from the inventor. Applicants thus conclude that inventor Raymond S. Wach either refuses to join in the application or cannot be found.

As proof that the non-signing inventor cannot be found or reached after diligent effort or refuse to execute the application papers, Applicants have enclosed herewith a Declaration of David W. Rouille indicating the steps which have been taken to contact the inventor. The last known address of Raymond S. Wach, is 23 Kimball Road, Hopkinton, MA 01748.

In the event any additional fee is required, please charge such amount to Patent and Trademark Office Deposit Account No. 500845.

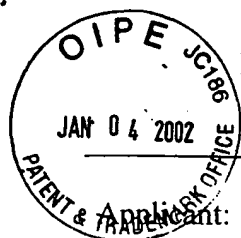
Respectfully submitted,

Dated: 10/22/01

David W. Rouille

David W. Rouille
Reg. No. 40,150
Attorney for Applicant(s)

Daly, Crowley & Mofford, LLP
275 Turnpike Street, Suite 101
Canton, MA 02021-2310
Telephone: (781) 401-9988
Facsimile : (781) 401-9966



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9/13/01
Date of Signature
and Mail Deposit

By: David W. Rouille
David W. Rouille
Registration No. 40,150
Attorney for Applicant(s)

Declaration Of David W. Rouille

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

1. My name is David W. Rouille and I am an attorney registered to practice before the United States Patent and Trademark Office, Registration No. 40, 150.
2. On or about May 30, 2000 I was contacted by Raymond S. Wach, at that time a Director of RSW Software, a wholly owned subsidiary of Teradyne Inc. (now a wholly owned subsidiary of Empirix Inc.). Mr. Wach requested that I prepare a provisional patent application

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3. The inventor of the subject matter was identified to me as Raymond S. Wach.
4. On June 5, 2000 I filed in the United States Patent Office a provisional patent application entitled "Method of Performing Distributed Load Testing". The provisional application named Raymond S. Wach as the sole inventor. A copy of the provisional application filing receipt is enclosed herewith (Application No. 60/209,235) as Exhibit A.
5. On September 27, 2000 Mr. Wach signed an Assignment, a copy of which is attached hereto as Exhibit B. Mr. Wach was an employee of RSW Software Inc. at that time, but is no longer an employee of either RSW Software Inc. or it's parent company Empirix Inc.
6. On or about February 27, 2001 I was subsequently instructed by Mr. Larry Apfelbaum, a director of Engineering at Empirix Inc., to prepare and file a regular utility application which claimed priority from the above-identified provisional application.
7. On May 17, 2001 I filed in the United States Patent and Trademark Office the presently pending utility patent application (which was assigned application no. 09/859,716) and which claims priority from provisional application no. 60/209,235. The claims of the utility application no. 09/859,716 are directed to the subject matter contained in the provisional application and therefore the inventorship of the provisional application and the utility application are believed to be the same.
8. Between May 10, 2001 and July 23, 2001 I attempted to contact Mr. Wach on numerous occasions by U.S. mail at his last known address of 23 Kimball Road,

Hopkinton, Ma 01748 and via telephone at his last known telephone number (508-435-2347). I received no response from Mr. Wach.

9. On May 10, 2001 I transmitted a copy of the patent application as well as a Declaration and Assignment to Mr. Wach at his last known address. The application, Declaration and Assignment were sent to Mr. Wach using the United States Postal Service. A copy of the letter is enclosed herewith as Exhibit C. I have not received any reply from Mr. Wach in response to the letter.
10. As evidenced by the assignment signed by Mr. Wach in the corresponding provisional application, Mr. Wach has an obligation to sign the Assignment and declaration in the present utility application, but has refused to do so.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 9/13/01

Respectfully submitted,

David W. Rouille

David w. Rouille
Reg. No. 40,150
Attorney for Applicant(s)

Daly, Crowley & Mofford, LLP
275 Turnpike Street, Suite 101
Canton, MA 02021-2310
Telephone: (781) 401-9988
Facsimile : (781) 401-9966

Exhibit A

FILING RECEIPT



0000000005328756*



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: ASSISTANT SECRETARY AND
COMMISSIONER OF PATENT AND TRADEMARKS
Washington, D.C. 20231

021-PRO

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
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60/209,235

06/05/2000

150

1415-PRO

1

Legal Department
Teradyne Inc
321 Harrison Avenue (L-53)
Boston, MA 02118

Date Mailed: 08/16/2000

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Raymond S. Wach, Hopkinton, MA ;

Continuing Data as Claimed by Applicant

Foreign Applications

If Required, Foreign Filing License Granted 08/16/2000

Title

Method of performing distributed load testing

Preliminary Class

Data entry by : JONES, PATRICIA

Team : OIPE

Date: 08/16/2000



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**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 36 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

PLEASE NOTE the following information about the Filing Receipt:

- The articles such as "a," "an" and "the" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents
Office of Initial Patent Examination
Customer Service Center
Washington, DC 20231

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Exhibit B

ASSIGNMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt, sufficiency and adequacy of which are hereby acknowledged, the undersigned do hereby:

SELL, ASSIGN AND TRANSFER to Teradyne, Inc. ("Teradyne"), a corporation of Massachusetts, having a place of business at 321 Harrison Avenue, Boston, Massachusetts, 02118, the entire right, title and interest for the United States and any and all foreign countries in and to any and all inventions which are disclosed in the application for United States Letters Patent entitled "Method of Performing Distributed Load Testing" (docket number 1415) for which I am named as an inventor; such application and all divisional, continuing, substitute, renewal, reissue and all other applications which have been or shall be filed in the United States and all other foreign countries on such inventions; and specifically including the right to file foreign applications under the provisions of any convention or treaty and claim priority based on such application in the United States;

AUTHORIZE AND REQUEST the issuing authority to issue any and all United States and foreign patents granted on such inventions or applications to Teradyne;

WARRANT AND COVENANT that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been or will be made to others, and that the full right to convey the same is possessed by me;

COVENANT, when requested and at the expense of Teradyne, to carry out in good faith the intent and purpose of this assignment by: executing all divisional, continuing, substitute, renewal, reissue, and all other patent applications on any and all such inventions; executing all rightful oaths, declarations, assignments, powers of attorney and other papers; communicating to Teradyne all facts known to the undersigned relating to the invention and the history thereof; and generally doing everything possible which Teradyne shall consider desirable for vesting title to such improvements in Teradyne and for securing, maintaining and enforcing proper patent protection for such improvements;

TO BE BINDING on my heirs, assigns, representatives and successors and to extend to the successors, assigns and nominees of Teradyne.

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(Signature) _____

Name: Raymond S. Wach

Date: _____

Sept. 29, 2000

STATE OF _____)

) ss.

COUNTY OF _____)

BEFORE ME, the undersigned notary, today personally appeared before me, Raymond S. Wach, known to me to be the person whose name is subscribed on the foregoing instrument who acknowledged to me that he executed the same of his own free will and as his free act and deed for the purposes and consideration therein expressed.

(Date)

(Signature of notary)

[SEAL]

MY COMMISSION EXPIRES: _____

CHRISTOPHER S. DALY
JUDITH C. CROWLEY
DONALD F. MOFFORD
PAUL D. DURKEE
BARRY GAIMAN
RICHARD M. SHARKANSKY
KERMIT ROBINSON
DAVID W. ROUILLE

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jcc@dc-m.com
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pdd@dc-m.com
bg@dc-m.com
rms@dc-m.com
kr@dc-m.com
dwr@dc-m.com

May 10, 2001

Raymond S. Wach
23 Kimball Road
Hopkinton, MA 01748

Re: U.S. Patent Application of Raymond S. Wach
Entitled: METHOD OF PERFORMING DISTRIBUTED LOAD TESING
Our File: EMPIR-022AUS (Your Ref. 021US)

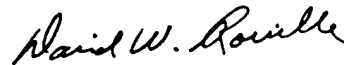
Dear Mr. Wach:

Please review the enclosed applications and sign and date the Declaration and Power of Attorney forms.

Assignments of the inventions to Empirix is also enclosed for execution by you before a Notary Public.

Please return the executed documents via Federal Express to me for filing in the United States Patent and Trademark Office. Do not hesitate to call me if you have any questions in this regard.

Sincerely,



David W. Rouille

DWR/cae
Enclosure

Exhibit C

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